

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 970 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RESHAMSINH UTTAMSINH

Appearance:

MR MA BUKHARI, APP for Petitioner
MR HM PARIKH for Respondent

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.R.SHELAT

Date of decision: 14/06/1999

ORAL JUDGEMENT (Per J.N.Bhatt, J.)

In this appeal, under section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has questioned the legality and validity of the acquittal judgment and order recorded by the learned Sessions Judge, Bhuj, in Sessions Case No.1/83, passed on 30.6.83, whereby, the respondent original-accused came to be acquitted from the charge under section 302 of the Indian Penal Code (IPC).

A skeleton projection of facts may be stated, at the outset, so as to examine and appreciate the merits of the appeal and the challenge against it. The prosecution case has been, in short, that Ex-military men were granted land in Lakhpat Taluka of Kutch District and in the present case in village Nara. The incident occurred on 24.9.82 at about 5.00 p.m. in the field bearing survey No.53 where deceased Pritamsinh was given a knife blow by accused Rashamsinh, which culminated into his death. The complaint was lodged by one Amarsinh on the next day, on the basis of which, the investigation was carried out. Upon completion of the investigation, the chargesheet followed against the accused and the Trial Court tried the case for the offence of murder of Pritamsinh, punishable under section 302 of the Indian Penal Code.

The prosecution placed reliance on 11 witnesses out of whom three were eye witnesses. The motive of illicit relationship between the deceased and a relative of the accused was alleged. Upon assessment and analysis of the evidence, the Trial Court acquitted the accused giving benefit of doubt, and, inter alia, holding that no motive is proved, that the so called eye-witness, complainant Amarsinh is not an eye witness, as such, and there were material contradictions in the evidence of the prosecution witnesses, complainant Amarsinh, Karmabai, Kalibai, Beldevsinh and Totasinh.

We have gone through the entire evidence and heard the learned Additional Public Prosecutor at greater length. It must be stated, at this stage, that we are dealing with an acquittal appeal in which the Trial Court has assigned convincing and strong reasons for not placing reliance on the evidence of the complainant, the so called eye witness and other witnesses. It is a settled proposition of law that merely because upon examination of the facts and the evidence, the appellate Court can take a different perception or a view or a better view is no ground for quashing the acquittal judgment and order of the Trial Court. From the facts and circumstances of the present case, it cannot be said that the view and the ultimate conclusion recorded by the Trial Court in acquitting the accused from the charge against him under section 302 of the IPC is perverse, improbable or totally unreasonable requiring our interference. Let it also be clarified that when the appellate Court, broadly, agrees with the views and the ultimate conclusion recorded by the Trial Court, it would not be necessary to reiterate the grounds upon which the final conclusion is founded

upon.

It is noticed by us that the complainant - Amarsinh - in his evidence stated that the deceased was given knife blow by the accused and he narrated the same to prosecution witnesses Karmabai and Kalibai. The evidence of Karmabai and Kalibai does not support the complainant on this score. On the contrary, eye-witnesses Beldevsinh and Totasinh have given altogether a different version. According to their evidence, they witnessed the incident in which the deceased was given an axe blow on his head. The evidence of the Medical Officer who had conducted the post-mortem goes to show that the deceased succumbed to the injury sustained on his neck which was possible by a sharp cutting instrument like knife. Therefore, the view taken by the Trial Court that the correct version of the incident was not placed on record by the prosecution cannot be faulted. In other words, when the gist and genesis of the prosecution is concealed for whatever reason, the Court has to become more circumspect and conscious in analysing and appreciating the evidence of the prosecution witnesses. It is in this context, the ultimate approach of the Trial Court in not placing reliance on the version of the eye witness Amarsinh, which is, clearly, contradicted by other prosecution witnesses, appears to be justified. Apart from that, the evidence of Karmabai and Kalibai is, rightly, found to be not dependable and trustworthy as a new version is introduced by them in their evidence before the Court than the one which was mentioned in their statement before the Police. Out of the three eye-witnesses, not only there is no consistency in proving and connecting the accused with the complicities which he is charged with beyond doubt, but the evidence of three eye-witnesses run diametrically opposite to each other. The complainant has testified that the deceased was given a knife blow on his neck, whereas, two other eye-witnesses not at all mentioned about the knife blow and have deposed about the giving of axe blow on the head.

Apart from that, the FIR was lodged very late and there is no reasonable explanation for lodging late FIR. The incident took place on 24.9.82 in the evening at about 5 'O clock in village Nara whereas the complainant lodged the complaint on the next day when the neighbour came and mentioned that complaint should be lodged before the Police. No doubt, the complainant tried to explain the delay by saying in the cross-examination that due to non-availability of tractor at the relevant time, complaint could not be lodged within time. But this

explanation is shattered when he had to further admit that there were 8 to 10 tractors in the village and on the next day he had also gone to lodge the complaint along with his neighbour in a tractor.

After having considered the facts and circumstances and the entire factual scenario emerging from the record of the present case, we have not been able to persuade ourselves to hold that the view taken by the Trial Court and the ultimate conclusion recorded by it in acquitting the accused from the charge under section 302 of the IPC is in any way unreasonable, unjust requiring our interference exercising our power under section 378 of the Cr.P.C. Therefore, we are left with no alternative but to raise our hands in helplessness and dismiss the appeal of the State while confirming the impugned acquittal judgment and order of the Trial Court.

In the result, the appeal is dismissed. The bail bond of the accused shall stand, obviously, cancelled.

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(vjn)